

PATENT

Appl. No. 09/998,557
Amdt. dated February 18, 2004
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 2645

REMARKS/ARGUMENTS

Claims 1, 2, 4, 6-15 and 17-24 were pending in this application. No claims have been amended, added, or canceled. Hence, claims 1, 2, 4, 6-15 and 17-24 remain pending. Reconsideration of the subject application as amended is respectfully requested.

Claims 1, 4, 6, 13, 15, 17 and 24, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,745,553 to Mirville *et al.* (hereinafter "Mirville"), in view of cited portions of U.S. Patent No. 5,187,735 to Herrero Garcia, *et al.* (hereinafter "Garcia").

Claims 2, 7-9, 11-12, 14, 18-20 and 22-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mirville, in view of Garcia, and further in view of the cited portions of U.S. Patent No. 5,937,047 to Stabler, *et al.* (hereinafter "Stabler").

Claims 10 and 21, stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Mirville, in view of Garcia, and further in view of the cited portions of U.S. Patent No. 6,160,883 to Jackson, *et al.* (hereinafter "Jackson").

Claim Rejections Under 35 U.S.C. § 103(a)

The Applicants respectfully traverse the rejection of all claims because the office action has not established a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

(MPEP § 2143) Here, the office action has not met all three criteria. Specifically, the office action does not cite a reference that teaches or suggests a motivation to combine reference teachings.

The office action does not cite a reference in the prior art that provides the necessary motivation or suggestion to combine the teachings of Mirville with those of Garcia, Stabler, and/or Jackson to achieve the Applicant's claimed invention. The Applicants note that,

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[o]bviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art.

(MPEP § 2143.01) However,

[t]he examiner may take official notice of facts outside the record which are capable of instant and unquestionable demonstration as being well-known in the art. ... If justified, the examiner should not be obliged to spend time to produce documentary proof. If the knowledge is of such notorious character that official notice can be taken, it is sufficient so to state. ... If the applicant traverses such an assertion the examiner should cite a reference in support of his or her position.

When a rejection is based on facts within the personal knowledge of the examiner, the data should be stated as specifically as possible, and the facts **must be supported, when called for by the applicant, by an affidavit from the examiner.**

(MPEP § 2144.03, emphasis added, citing 37 CFR §1.104(d)(2))

Because no reference is cited that provides the teaching, suggestion, or motivation to combine the references, the Applicants once again assume the office action is relying on facts within the personal knowledge of the Examiner. The Applicants, therefore, respectfully traverse the rejection and reiterate our request for either an express showing of documentary proof, or an affidavit specifically stating the facts within the personal knowledge of the Examiner, as required by 37 CFR §1.104(d)(2).

For the above reasons, the Applicants believe all pending claims are allowable over the cited references.

CONCLUSION

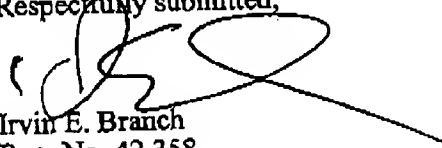
In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

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If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,



Irvin E. Branch
Reg. No. 42,358

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
IEB:al:cmb
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